

DOCUMENT RESUME

ED 141 824

CS 203 525

AUTHOR Carlscn, Ken
TITLE Censorship: Cases and Categories.
PUB DATE 77
NOTE 25p.; Paper presented at the Annual Meeting of the American Educational Research Association (New York City, April 1977)
EDRS PRICE MF-\$0.83 HC-\$1.67 Plus Postage.
DESCRIPTORS *Censorship; *Community Role; *Court Litigation; *Educational Policy; Elementary Secondary Education; *Moral Values; *Political Attitudes
IDENTIFIERS *Freedom of Information

ABSTRACT

The author presents a series of exercises designed to lead the reader to the author's conclusions about censorship. Seven general conclusions are presented: (1) censorship runs the full ideological spectrum, both in the kinds of material that get censored and in the kinds of people who do the censoring; (2) censorship disputes frequently defy resolution through rational discourse; (3) a vague policy governing controversial materials does little good and may do harm; (4) a policy that is substantively detailed may prevent censorship problems, but at the price of flexibility and reasonableness; (5) ideological representativeness is too important in education to be left to individual teacher judgment; (6) in a democracy, matters of ideology and censorship are subject to popular control and not expert fiat; and (7) what is needed is a procedure for democratically resolving the issues as they arise, a procedure that will include all the parties in the case. In school censorship, this means students, teachers, parents, administrators, board, and public. (AA)

* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *

ED141824

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY.

PERMISSION TO REPRODUCE THIS COPY
RELATED MATERIAL HAS BEEN GRANTED BY

Ken Carlson

CENSORSHIP: CASES AND CATEGORIES

Ken Carlson
Rutgers University

ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE NATIONAL INSTITUTE OF EDUCATION FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER

Paper presented to the 1977 Annual Meeting of the American Educational Research Association, as part of the symposium on "The Political Ideology of Schooling," April 8, 1977, New York City.

Introduction

This paper is designed to lead you through some exercises that should cause you to come to my conclusions. Putting it bluntly could result in your resistance; however, since you will not know the conclusions to which you are being led unless you read ahead, there will be no way of knowing what to resist. Thus, the conclusions will be truly your own, but I expect that we will agree on most of them. The extent of our agreement or disagreement is of sufficient interest to me to solicit your written reaction.

EXERCISE I

Look at the Chinese Menu on the next page and decide which items are the most censorable from your standpoint. You may not wish to see any of the items actually censored, but still some may strike you as being more censorable (objectionable) than others.

Once you've made your selections, look to see whether they cluster in a single column. If so, does that column have any

CS 203 525

EXERCISE I

A CHINESE MENU

Column A

Down These Mean Streets
Slaughterhouse Five
Catcher in the Rye
The Affluent Society
Soul on Ice
The Scarlet Letter
Brave New World
Lysistrata
Portnoy's Complaint
MACOS

Column B

The Merchant of Venice
Huckleberry Finn
Uncle Tom's Cabin
Birth of a Nation
A. Jensen's theories
W. Shockley's theories
Reifenstahl's films
Death Wish
TV violence
cigarette ads

Column C

St. Augustine
Shakespeare
Dryden
Ben Franklin
Chaucer
The Bible
Swift

Column D

Playboy
Hustler
Deep Throat
masturbation
Earl Butz's jokes
4-, 5-, and 12-letter words

theme or pattern? How does it differ from the other columns?
My conclusions from this can be found on pages 12-16.

EXERCISE II

This exercise consists of reading the statement on the following page and formulating a response. The author of the statement, Reverend Harrah, was opposed to the reading material that was being introduced into the Kanawha County, West Virginia schools because of what he thought was the sinful sexual content in that material. How would you reply to Reverend Harrah?

My conclusion is on page 16.

EXERCISE II

I am a minister of the Pentecostal Church. The standards and articles of faith of our church rest completely in our belief that the Bible is the absolute, infallible Word of God. We do not intend to compromise our beliefs, nor do we intend to agree to go to Hell, even if the majority of the people vote to do so. This is not a situation where opposing views can be reconciled. As you well know, there are some things that are somewhat like night and day, or darkness and light - they are beyond the point of reconciliation. There is no dusk or dawn or in between or neutral zone. There is a line drawn and the people stand either to the right or the left of it.

-statement to the NEA Panel by Rev. Lewis Harrah, Pastor of the Church of Jesus Christ, North Charleston, as quoted in A Textbook Study in Cultural Conflict (NEA Inquiry Report on the Textbook Controversy In Kanawha County, West Virginia), p. 13.

EXERCISE III

Read the U.S. Supreme Court definition of obscenity on the next page. Answer the following questions:

1. Who is the "average person" in your community?
2. What are the "standards" of your community?
3. What is your "community" for purposes of defining obscenity?
4. What is "prurient interest?"
5. What kinds of sexual conduct do you find to be "patently offensive?"
6. How much value amounts to "serious" value?
7. What are "ultimate sexual acts?"
8. Is there anything other than sex or excretion which you consider to be obscene?

For my conclusions from this exercise, see pages 16-20.

EXERCISE III

DEFINITION OF OBSCENITY BY THE U.S. SUPREME COURT IN MILLER

V. CALIFORNIA, JUNE 21, 1973:

1. The average person applying contemporary community standards finds that the material taken as a whole appeals to prurient interest.
2. The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.
3. The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

The Court went on to suggest two areas which the state law could specifically define:

- a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.
- b. Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.

EXERCISE IV

Read the New Jersey test of obscenity on the next page and determine whether it is an improvement on the Supreme Court test. Should the New Jersey law be a model for the nation?

My conclusions are on pages 20-21.

EXERCISE IV

THE NEW JERSEY TEST OF OBSCENITY FOR MINORS AND NON-CONSENTING
ADULTS, CHAPTERS 446-448; LAWS OF 1971:

- a. "Material obscene for persons under 18" means any description, narrative account or depiction of a specified anatomical area or specified sexual activity contained in, or consisting of, a picture or other representation, publication, sound recording or film, which, by means of posing, composition, format or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the area or activity.
- b. "Specified anatomical area" means
 - (1) less than completely and opaquely covered human genitals, pubic region, buttock or female breast below a point immediately above the top of the areola; or
 - (2) human male genitals in a discernibly turgid state, even if covered.
- c. "Specified sexual activity" means
 - (1) human genitals in a state of sexual stimulation or arousal; or
 - (2) any act of human masturbation, sexual intercourse or sodomy; or
 - (3) fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast.

EXERCISE V

Read Bill 919, below, and decide whether it should have been enacted into law and if it would be a desirable law in your state.

My opinion is on pages 21-22.

NEW JERSEY SENATE BILL NO. 919, INTRODUCED MARCH 18, 1974
BY SENATORS MARTINDELL, BUEHLER, AND MENZA:

Every teaching staff member employed in any public school or institution in this State and every person employed in an academic capacity in any public college in this State shall have the right to use and present any available subject matter, facts, materials and methods which are relevant to the course of study, discussion or lecture being presented, including the presentation of diverse sides of any controversial matter, provided, however, that the expression of personal opinions shall be so indicated.

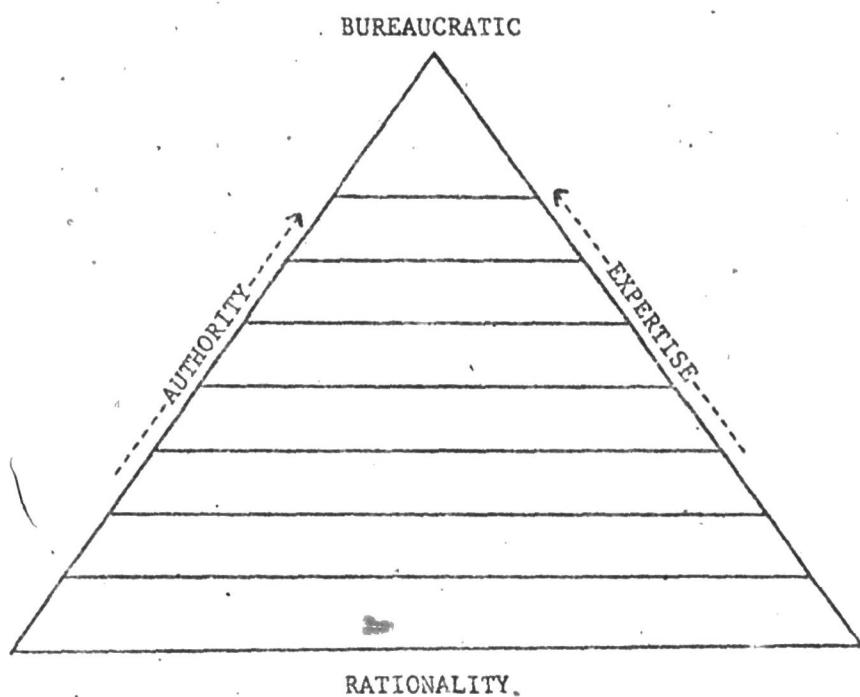
This act shall take effect immediately.

EXERCISE VI

On the diagram on the next page write in the major levels in the bureaucracy of your school district. See whether the authority of these levels increases with increases in the expertise of the levels. That is, does each higher level in the hierarchy possess both more authority and more expertise in curricular matters than the level below it?

My conclusions are on pages 22-23.

EXERCISE VI



EXERCISE I - CONCLUSION

1. The likelihood is that your items do tend to cluster in a single column.
2. The columns do have distinguishing themes. The themes for Column A are sex and iconoclasm. Homosexuality, promiscuity, adultery, rape and ribaldry are the sexual themes. Defiance of secular authority and lampooning of religion are the themes of iconoclasm.
Something else that unites the themes in Column A is that they have all been the targets of censorship from the right. Kurt Vonnegut recently alleged that several of the items in Column A, including his own Slaughterhouse Five, are on a list being circulated nationwide by right-wing groups intent on having the materials suppressed.
If your selections fell into Column A, you are probably a conservative. That such items are not likely to bring out the censoriousness of those on the left can be seen in the list of celebrities who signed the full-page New York Times ad of February 20, 1977 in defense of Larry Flynt, publisher of Hustler - an ad which likened Flynt to Andrei Sakharov.
3. Column B contains the themes of prejudice and violence. The first seven items in this column have been alleged

to be racist or anti-Semitic, with the last three items relating to some form of violence. These are themes which are especially offensive to those on the left, and which liberal groups have tried to censor, sometimes successfully.

The most recent example of such objectionable material is Arthur Butz's The Fabrication of a Hoax, which asserts that "the Nazi extermination of European Jews was nothing more than a Zionist-inspired myth".¹ Whether Butz will retain his position as an associate professor of electrical engineering at Northwestern University remains to be seen.

If the items you selected are in Column B, chances are that your ideology is somewhere from liberalism leftward.

4. Column C is a listing of items which those nineteenth century expurgators, Thomas and Harriet Bowdler, tried to "bowdlerize," and often succeeded. What rattled the Bowdlers was not just sex but human anatomy.² It is interesting to note how persistent sex

1. Seth S. King, "Professor Causes Furor by Saying Nazi Slaying of Jews is a Myth," The New York Times, January 28, 1977, p. A-10.
2. See Noel Perrin, Dr. Bowdler's Legacy: A History of Expurgated Books in England and America, New York: Atheneum, 1969.

is as an object of censorship. Although greater license toward sex seems always to be the rule, sex itself is still the main target of censorship. If the items you selected are in Column C, you are an anachronism in the objects of your displeasure if not the theme.

5. As for Column D, that might be called "the family special." Playboy, Hustler, and Deep Throat are certainly objectionable to those on the right, but these items have also incurred the censoriousness of women's groups which are otherwise on the left. Women resent the objectification and dehumanizing of women that occurs in these materials. It is worth noting in this regard that Shana Alexander, the liberal commentator on 60 Minutes, thinks that Hustler should be censored, whereas Jack Kilpatrick, her conservative opponent, thinks it should be tolerated.

Masturbation is a bugaboo to that good liberal medium, the BBC. In a Monty Python episode, a character was supposed to describe his hobbies as "golf, masturbation, and strangling animals." The BBC struck the mention of masturbation.

Earl Butz's jokes were censored as news that's not

fit to print by The New York Times. It was not the racist character of the jokes but their smutty content that invoked the Times' censorship. To learn what Butz really said, and whether he should have been sacked for it, one had to read sources that were left of the Times, i.e., Rolling Stone or New Times.

And, of course, The New York Times will not print four-letter words, even in reviews of poetry which quote lines containing these words. In the September 29, 1974 and September 7, 1975 issues of The New York Times Book Review, Helen Vendler had long articles on several new collections of poetry in which she quoted liberally from the poems themselves. The reader repeatedly came upon Times' elisions such as c---, f---, and s---. It is obvious then that the Times doesn't print shit.

If you selected items in Column D, it may be that you are a feminist or a staff member at one of the "respectable" liberal media.

6. A general conclusion from the foregoing is that censorship is a trans-ideological urge, even though the targets may be ideologically specific. That the urge can be irresistible is shown by the fact that the American Civil Liberties Union denied Elizabeth

Gurley Flynn a place on its board of directors because of her politics at the same time that it was defending the rights of other Communists.³

EXERCISE II - CONCLUSION

There is no reply that can be given to the Reverend Harrah. He has stated his position in metaphysical terms, by which I mean terms that are not susceptible of empirical or logical persuasion or dissuasion. When ideology is rooted in religion this way, one is down to (or up against) absolute presuppositions for which there is no court of appeal. Many censorship battles are of this nature - a melancholy fact, but one which no amount of sweet reasoning can change. Compromise; reconciliation are not possible, as Reverend Harrah makes clear. The only thing left is to fashion a system for deciding who the winners and losers will be. Ideally, this system would have been worked out before the censorship controversy arose.

EXERCISE III - CONCLUSION

1. The U.S. Supreme Court definition of obscenity is hopelessly vague. Worse, it is mischievously vague.
3. For a discussion of this episode, see Peggy Lamson, Roger Baldwin, Founder of the American Civil Liberties Union, Boston: Houghton-Mifflin, 1976.

It is an incitement to profiteers on either side of the issue, both the peddlers and the prosecutors.

The Court has defined a crime in terms that make it impossible to identify the criminal. What other legal offense is left to so many subjective interpretations?

2. The "average" person only exists as a statistical abstraction. It is illusory to think that twelve, or even six, "average" people can be found to serve as a jury in an obscenity case. It is just as foolish to believe that twelve atypical people can collectively constitute one "average" person. "Average" how? The most meaningful "average" might be average in attitude toward censorship. But how many people advertise these attitudes or can articulate them or have even developed them?
3. The purveyors of smut claim that the sales of their merchandise is the best index of the community's "standards." It's at least a quantitative index. It's also a behavioral index and not a rhetorical one. The question then arises as to whether people should be held to higher standards than those they display in their behavior. If so, how does one piece together a standard from a welter of conflicting and peripherally relevant opinion? Assuming

that a standard can be assembled, how does it get applied to specific instances and by whom?

4. Then there is the question of the relevant community. Is it the nation, the state, the county, the municipality, the ward - or no geopolitical community at all? Perhaps it should be a community of interest, e.g., the gay community. For purposes of litigation, it might be well to make it a jurisdictional community, e.g., the territory covered by the Third Circuit Court of Appeals. If the "community" is defined in too restricted terms, it may reduce access by the larger community to the things it wants. On the other hand, a broad definition of "community" can mean the imposition of alien standards on smaller communities.
5. "Prurient interest" and "patently offensive" are other subjective terms. It could also be argued that these terms are mutually exclusive. Anything that titillates one's prurient interest is hardly going to be patently offensive.
6. In the matter of "serious literary, artistic, political, or scientific value," the question of expert judgment occurs. That means that each side parades its "experts" before a jury in a charade in which

all three parties operate from ideologically derived prejudgments.

7. As for "ultimate sexual acts," I, at age 40, would like to think that I have not yet experienced such acts and still have those to look forward to. What Chief Justice Burger, who wrote the Court's majority opinion, means by such acts I do not know. If ever you should chance upon him, you could ask.
8. Finally, it is noteworthy that the Court considers only two forms of human behavior to come under its obscenity criteria: sex and excretion. What Freud could have made of that! On the issue of obscenity, the U.S. Supreme Court is clearly more compatible with those on the right than those on the left. In its *Miller v. California* ruling, the Court seemed to be intent upon extricating itself from the obscenity-adjudication business by passing the buck to localities along with some procedural guidelines. However, the Court did not stop there, but added the substantive areas of sex and excretion. In doing so, the Court may have, wittingly or unwittingly, spared both the right and the left from being savaged for nonsexual ideology, however execrable. Thus, the Court is to be faulted for the vagueness of its ruling and the ideological bent of its

specific references to sex and excretion, but the Court can be commended for at least limiting the substantive specificity of the ruling.

EXERCISE IV - CONCLUSION

The New Jersey law is good in that it omits adults from its "protection." The reader should be informed, however, that New Jersey has a separate law for adults and does not eschew a role for government in regulating private morality. The law on page eight is also good insofar as sections b and c are clear statements of the proscribable. It would be difficult to plead incomprehension of these sections. Such is not the case with section a. There we are back to the Supreme Court criterion of "prurient interest." All a juror can do with this is see whether the material at issue arouses his or her own prurient interest, and run the risk of publicly pronouncing a kind of personal guilt.

Sections b and c, for all their precision, are ludicrously and anachronistically specific. They have the clarity of calipers. Some of the things they prohibit are already available to kids through R-rated movies to which they can be taken by their parents. The law was quickly made obsolescent by the culture.

The Supreme Court was too vague and the New Jersey legislature was too specific. The conclusion this suggests is

that there is a large element of futility in trying to devise formulae that will preclude censorship problems or give clear guidance when the problems occur.

At any rate, the New Jersey legislature agrees with the Court that it is sex and not other forms of human activity that are legally obscene. And since the New Jersey law was intended to protect minors, it, like the Supreme Court ruling, could be used to safeguard the rights of minors to be exposed to nonsexual ideologies. An interesting illustration of this is the brochure that Larry Flynt mailed to his fellow Ohioans. It contained grisly color photographs of bodies blown apart in Vietnam. It was revolting but, legally, it was not obscene.

EXERCISE V - CONCLUSION

Bill 919 would confer upon teachers an immunity to censorship and an impunity to censure. Teachers, especially those with tenure, would be the final arbiters of their own actions. They would have virtual carte blanche in curricular decisions. Not only would they be exempt from supervision by the school board and administration, they would be beyond supervision by their peers.

The initial impact no doubt would be to inject greater ideological diversity and vigor into the schoolwide curriculum. In time, however, the classroom curriculum could well degenerate

into ideological indoctrination. On the college level, where students have the sophistication to resist the teacher's blandishments and where they are not likely to have one teacher all year, this is no great danger. At lower levels, it could create impediments to critical analysis rather than being a stimulus thereto.

Thus, the effort to preclude problems of censorship by writing preventive legislation fails in this case as it does in the case of obscenity.

EXERCISE VI - CONCLUSION

An argument can be made that the people who know the most about social studies teaching, say, are the social studies teachers. They know the subject and they know the kids. The social studies supervisor may be out of touch with the latter, never mind the administration or the board. Therefore, the people at the bottom of the bureaucratic hierarchy - those with the least authority - are the ones with the most expertise. The rationality of the Weberian bureaucratic model, where authority and expertise ascend together, may be applicable to the Prussian army, but it does not reflect what goes on in the American school. There, the bureaucracy is irrational because authority is inversely related to expertise. Given their relative superiority in expertise, teachers should

be free to deal with ideology as they see fit. Bill 919 makes sense after all..

But does it? Does the teacher's expertise extend to ideology - to values - or is it restricted to factual knowledge and pedagogical strategies? Why should teachers presume to be more expert in matters of ideology than the public whom they serve? Even if a case could be made for this superiority with certain teachers in some school systems, giving these teachers authority commensurate with their expertise might make the bureaucracy rational but it would not make the school system democratic. The ideology of democracy requires that schooling be popularly determined. The experts can attempt to influence this determination, but they cannot preempt it.

SUMMARY

The several conclusions which the author has drawn from the six exercises can be summarized in seven general conclusions.

1. Censorship runs the full ideological spectrum, both in the kinds of material that get censored and the kinds of people who do the censoring.
2. Censorship disputes frequently defy resolution through rational discourse.

3. A vague policy governing controversial materials does little good and may do harm.
4. A policy that is substantively detailed may prevent censorship problems but at the price of flexibility and reasonableness.
5. Ideological representativeness is too important in education to be left to individual teacher judgment.
6. In a democracy, matters of ideology and censorship are subject to popular control and not expert fiat.
7. What is needed is a procedure for democratically resolving the issues as they arise - a procedure which will include all the parties to the issue. In cases of school censorship, this means students, teachers, parents, administrators, board, and public. The procedure may not be fun, but it's bound to be educational.